

# IOWA AUTO DEALERS FOR EQUAL OPPORTUNITY

## REVISED POSITION MEMORANDUM – SSB 1236, SSB 1237 & HSB 224

### OPPOSITION TO EXPANDED STATE REGULATION IMPOSED UNDER PROPOSED CHANGES TO AUTO DEALERS LICENSING LAW – IOWA CODE CHAPTER 322

#### ASSOCIATION:

The Iowa Auto Dealers For Equal Opportunity (I.A.D.F.E.O.) is comprised of 110 automobile dealers doing business in both rural and urban areas within the State of Iowa.

These new auto dealers have joined together to defeat proposed changes to Iowa Code Chapter 322.

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#### PROBLEMS WITH THE PROPOSED LEGISLATION:

- Expansion of state's regulatory scheme
- Creates more government involvement and red-tape in a business' decision to move its location
- Regulations stifle normal competition between auto dealers
- Regulations are outside the traditional purpose of the dealer licensing law which is to protect consumers
- The regulations are not proposed to correct an existing or imminent evil or problem
- New regulations do not enhance the state's current police power to protect against dealer diminution of service to customers
- Regulations broadened to affect dealer vs. dealer relationships as opposed to protecting dealers vs. factory
- Regulations set arbitrary geographical restrictions not based on market share figures or population density
- Restrictions do not contemplate a particular dealer's area of responsibility vs. another dealer's AOR and thus may have disparate impact
- The proposed legislation incorporates "transition" language which may be interpreted as having retroactive effect despite the bill's stated effective date which is set at enactment
- The legislation may also affect Recreational Vehicle dealers, Motorcycle dealers, Snowmobile and ATV dealers

## **THE PROPOSED LEGISLATION:**

### **Restrictions on New Dealer License Applicants**

Expands the State's regulatory powers over automobile dealers by restricting new dealer license applicants from locating their place of business within an arbitrary five (5) miles of the geographic boundary of that new dealership's assigned area of responsibility as dictated by the factory – dealer contract. The proposed law provides inadequate alternatives from the geographical restraints set forth above, by requiring the new license applicant to obtain the written consent of all new motor vehicle dealer licensees of the same line-make who have their principal place of business located within ten (10) miles of the proposed new location and if unable to get consent, the new dealer applicant is burdened with having to request authority to locate the business from the State by establishing at a hearing held by the Department of Inspections and Appeals that there is good cause and that one of the primary purposes for establishing the proposed business location is not to serve areas outside the applicant's community or area of responsibility. The burden of proof at the hearing is on the new dealer license applicant and any other interested party is granted the opportunity at hearing to rebut the applicant. Further, the applicant has the responsibility to give notice of the hearing to all other same make or makes dealers within a fifteen (10) mile radius of the proposed business location. The new applicant also must bear the cost of the hearing at the time the application for the new dealer license is made. Excepted from the limitations above is the situation where a geographic boundary of the applicant's area of responsibility is also a boundary of the state with another state.

### **Relocation of Dealer's Place of Business**

Expands the State's regulatory powers over dealers and infringes on fair competition by restricting the movement of all existing auto dealerships. An existing dealer may not relocate its dealership to a location closer to and less than ten (10) miles from the principal place of business of another new motor vehicle dealer licensee of the same make or makes. The proposed law provides inadequate exceptions. The geographical restraint as set forth above apply to all moving dealerships unless the proposed new location is within the moving dealer's area of responsibility and is within two (2) miles of its existing location, and the licensee has not relocated its principal place of business within the past five (5) years; or the moving dealer files with the Department of Inspections and Appeals the written consent of all dealers of same make or makes who have a principal place of business within ten (10) miles of the proposed new location. If the moving dealer is unable to obtain the consent of the other dealers the law would require the moving dealer to file application requesting a hearing from the Department of Inspections and Appeals and places the burden on the moving dealer to show good cause for the move and that one of the primary purposes for the move is not to serve areas outside of the applicant's area of responsibility. The notice for the hearing must go to all same-line make dealers within a further arbitrary fifteen (10) miles of the proposed location. The Department of Inspections and Appeals has discretion to notice any other persons deemed by the department to be interested persons. The application may be dismissed if the applicant fails to list all new motor vehicle licensees of the same make or makes within fifteen (10) miles of the proposed location. The applicant shall deposit with the department at the time the application is filed a sum to be determined by the Department of Inspections and Appeals to pay the cost of the hearing. Another exception is drawn where the principal place of business of another new motor vehicle dealer licensee of the same make or makes is located less than five (5) miles from a common geographic boundary of the licensee's community, in which case a new motor vehicle dealer licensee of the same make or makes whose community adjoins that geographic boundary may move its principal place of business for that make or makes to a new location within its area of responsibility which is not closer than five (5) miles of that common geographic boundary.

Notwithstanding any provision as set out above regarding the relocation of a dealership, a dealership shall not be moved to a location which is more than ten (10) miles from its existing location unless the following requirements are also satisfied: The principal place of business is being moved by the licensee to a location within the licensee's community which is separately licensed to the same licensee as the principal place of business of a new motor vehicle dealer; or the licensee's area of responsibility has been altered with the change being more than twenty percent in the area of the licensee's area of responsibility; or the licensee's franchise has been amended, with the express consent of the licensee to the amendment, to specify the new

location of the licensee's principal place of business within the licensee's area of responsibility. The licensee files an application with the department for authority to move to the proposed new location and establishes at a hearing held by the Department of Inspections and Appeals that the proposed new location will not substantially diminish the motor vehicle service provided by the applicant in its community for the make or makes sold by applicant and that one of the primary purposes for the move to the proposed new location is not to serve areas outside applicant's community. Notice of the hearing is to all dealers of like make or makes located within fifteen (10) miles of the proposed new location. The Department may notice any other interested person and the cost of the hearing is borne by the applicant at the time the application is filed.

#### **Transition Provision**

The proposed legislation proposes the following arbitrary "transition" provision. The new regulations shall not apply to the establishment of the place of business of a new motor vehicle dealer licensee at a new location, or to the move of the principal place of business of a new motor vehicle dealer licensee to a new location, which meets all of the following: The licensee had acquired or leased the real estate for the new location in licensee's existing community on or before August 14, 2004; construction of the place of business at the new location had commenced on or before October 1, 2004; and a new license has been issued by the Department to the licensee for the new location on or before October 1, 2005. As proposed, the Act would take effect upon enactment.

#### **PURPOSE OF CURRENT IOWA CODE CHAPTER 322 – Auto Dealer Licensing Law:**

- The policy reason underlying Iowa Code chapter 322 is to protect Iowa consumers of motor vehicles from fraud and deception. See *State v. Miner*, 331 N.W. 2d 683, 687 (Iowa 1983).
- Although the regulation of motor vehicle dealers is a legitimate state interest, "[t]he State has an interest in whether the motor vehicles operating upon its highways are properly serviced and maintained and can properly legislate to facilitate the maintenance and repair procedures. The State also has an interest to see that buyers of motor vehicles are not misled nor defrauded." 1978 Iowa Op. Atty. Gen. 832, 1978 WL 17546 (Iowa A.G.).
- The state's police power is appropriately applied to business where that business is deemed inimical to public welfare.
- The law does not contemplate protecting dealers from one another.

#### **PURPOSE OF CURRENT IOWA CODE CHAPTER 332A – Dealer Franchise Law:**

- In 1970 the Iowa Legislature passed a law "to provide for fair trade practices by motor vehicle franchisers." 1970 Iowa Acts ch. 1160 Preamble. This law was codified in Iowa Chapter 322A.
- The primary purpose of chapter 322A is to protect the public – to ensure that once franchises are established in a community, the requisite services are continued for the benefit and safety of vehicle buyers and the public at large.
- Protects dealers from factory overreaching.

### **BACKGROUND:**

In 2004, a small group of metro Des Moines auto dealers formed an organization called Iowa Auto Dealers For Fair Competition (I.A.D.F.F.C.). That group sought changes to the Dealer Franchise Law contained in Iowa Code Chapter 322A which would protect them from competing auto dealers. The effort attempted to amend other transportation bills throughout the legislative session.

During the 2004 legislative session the Iowa Auto Dealers Association (I.A.D.A.) successfully fought the legislation and amendments.

In December of 2004, the I.A.D.A. voted to take a neutral stance on the proposed legislation as there is not consensus among their membership.

The Iowa Auto Dealers For Equal Opportunity (I.A.D.F.E.O.) consists of auto dealers who have formed an organization to respond to the current proposed legislation.

I.A.D.F.E.O. members have engaged legislators through individual letters and phone calls in an effort to defeat the proposed legislation.

### **OTHER POTENTIAL PROBLEMS WITH PROPOSED LEGISLATION:**

- The proposed legislation may violate the Commerce Clause, U.S. Const., art. 1, §8, in that the regulations inhibit competition and may affect interstate commerce.
- The proposed licensing requirements may deprive dealers of due process and equal protection under the federal and Iowa constitutions. U.S. Const. Amend. XIV; Iowa Const. art. 1, §9.
- The proposed legislation is an economic regulation and may be challenged where there is no evil at hand for correction and where the legislative measure is not a reasonable and rational method to correct it.
- There is no legitimate State interest in regulating the economic activity of dealers in terms of competition with other dealers and thus the proposed violation may constitute state regulation which violates federal law such as the Sherman Act.
- It is argued that other states have enacted similar legislation but it is unclear whether those states amended their dealer franchise law or whether they changed their dealer licensing statutes.
- The Iowa Department of Transportation is taking a neutral position on the bill as it defers to the legislature to make public policy. The DOT only enforces policy. I.D.O.T. did not recommend the legislation to correct an existing problem.
- If the legislature expands the public policy reasons for regulation of dealer to dealer relations, that same public policy rationale may extend to other industries and other franchises.

Prepared by James Piazza, Jr. and Jeanine Gazzo – Lobbyists for I.A.D.F.E.O.